

CLAYTON F. SCHACHT

IBLA 81-261

Decided September 25, 1981

Appeal from decision of the Oregon State Office, Bureau of Land Management, returning the notice of location and filing fee for the Yellow Rose and Skoal Row mining claims.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

APPEARANCES: Clayton F. Schacht, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Clayton F. Schacht has appealed the decision of the Oregon State Office, Bureau of Land Management (BLM), dated December 15, 1980, returning his notice of location and filing fee for the Yellow Rose and Skoal Row mining claims and declaring the claims abandoned for failure to file a copy of the notice of location for the claims with BLM within 90 days after the date of location as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and Departmental regulation 43 CFR 3833.1-2.

In his statement of reasons, appellant argues that he should not be penalized for his delay in filing the notices of location because his delay in so doing was "[w]ithin the framework of establishing a legitimate claim \* \* \*."

The notices of location for the Yellow Rose and Skoal Row mining claims indicate that they were both located on August 26, 1980. The location notices were received and date stamped by the BLM office in Portland, Oregon, on November 25, 1980, 91 days after the date of location.

[1] Section 314(b) of FLPMA, 43 U.S.C. § 1744(b) (1976), requires the owner of an unpatented mining claim located after October 21, 1976, to file a copy of the official record of the notice of location in the BLM office designated by the Secretary of the Interior within 90 days after the date of location.

The pertinent regulation, 43 CFR 3833.1-2(b), provides as follows:

The owner of an unpatented mining claim, mill site, or tunnel site located after October 21, 1976, on Federal land shall file (file shall mean being received and date stamped by the proper BLM office), within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location \* \* \*.

Failure to so file is considered conclusively to constitute abandonment of a claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4.

There is no provision in the statute authorizing the Department to waive compliance and accept late filings or to reinstate claims which were not timely filed. Thomas F. Byron, 52 IBLA 49, 50 (1981); Cleo May Fresh, 50 IBLA 363, 365 (1980).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.

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Administrative Judge

We concur:

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Gail M. Frazier  
Administrative Judge

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Bruce R. Harris  
Administrative Judge.

